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Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance on his mission to Argentina

Note by the Secretariat

At the invitation of the Government, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance visited Argentina from 16 to 23 May 2016. The mandate holder addresses the persisting challenges the country faces in fighting racism, racial discrimination, xenophobia and related intolerance, including not only the alarming situation of indigenous peoples, but also the marginalization of migrants and people of African descent. He examines access to economic, social and cultural rights, access to justice, police profiling and stigmatization and makes recommendations.

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Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance on his mission to Argentina*

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* Circulated in the language of submission and in Spanish only.

I. Introduction

1. At the invitation of the Government, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance visited Argentina from 16 to 23 May 2016. During the visit, the Special Rapporteur held meetings in Buenos Aires, the Province of Buenos Aires, Salta and Formosa. He met with officials, both at the federal and provincial levels, including the Minister for Justice and Human Rights, the Governors of the provinces of Formosa and Salta and the Vice President of the National Supreme Court. He also met with United Nations agencies, civil, indigenous and migrants' communities, Afro-Argentines, representatives of the Jewish community and victims of discriminatory practices.

2. The Special Rapporteur was also granted access to the penitentiary facility of Ezeiza, where he met with prison authorities and detainees.

3. The Special Rapporteur wishes to thank the Government for its cooperation in the preparation and conduct of the visit. He also addresses his sincere gratitude to the Office of the United Nations Resident Coordinator, civil society organizations and communities that travelled from remote parts of the provinces to meet with him.

4. The Special Rapporteur notes with appreciation that Argentina has a legal and institutional framework to address issues of discrimination but is alarmed that, in spite of the many recommendations issued by various human rights mechanisms, the situation remains dire for historically marginalized groups. He hopes that, by adopting his conclusions and recommendations, the Government can effectively address the prolonged severe situation of certain population groups, especially indigenous peoples.

II. General background

5. Prior to Colonization in the sixteenth century, the population of Argentina had been composed of indigenous peoples. Buenos Aires was founded in 1580, by the overflow from the neighbouring Spanish colonies. Argentina has always been the country in South America with the broadest migration history and remains the country with the greatest number of immigrants in the region. Historically, immigrants arrived from Europe and from neighbouring Latin American countries, mainly Chile, Paraguay, the Plurinational State of Bolivia, Uruguay and Peru. A significant number of African slaves were also brought to Argentina. In 1810, black people represented one third of the population of Buenos Aires.[1] These historical facts are important in understanding the current fabric of the Argentine society but also the history of inclusion and exclusion in the country.

6. Indeed, the history of discrimination and xenophobia in Argentina can be traced back to the country's beginnings. The Argentine identity has been built on the negation or the subordination of minority groups. In the process of the construction of the State, there has been a tendency to homogenize by failing to recognize certain groups, such as indigenous peoples or Afrodescendants, which translated into the suppression of the expression of their cultures and languages and ultimately their invisibility in society. Indigenous peoples and people of African descent were framed as being in a stage of very primitive "evolution", a perception in line with the racist ideology of that time. They were viewed as outsiders to the country's aspiration to build a "model European civilized society".

7. Nation-building in Argentina was based on a Eurocentric vision that glorified the idea of the educated, white European immigrant, as contained in the 1853 Constitution. The cultural, social and economic contributions of historic migration waves is undeniable, and the idea that Argentina is the "Europe of Latin America" became deeply ingrained in the country's ideal and persists today.

[1] See Government of Buenos Aires, *Bicentenario: 1810-2010: Memorias de un pais* (Buenos Aires, 2010), https://cen7.files.wordpress.com/2011/04/bicentenario.pdf.

8. Argentina is a federal constitutional republic with 23 provinces and an autonomous city, the capital Buenos Aires. Provinces enjoy a high level of autonomy, which also explains the different levels of implementation of anti-discrimination laws and measures. The provinces with the highest proportion of indigenous are also the places with the greatest incidence of violent expression of racism and discrimination against this minority.

III. Legal framework for combating racism and discrimination

A. International human rights obligations

9. Argentina has ratified all the international human rights instruments,[2] including the International Convention on the Elimination of All Forms of Racial Discrimination. The country made a declaration under article 14 of the Convention in which it recognized the competence of the Committee on the Elimination of Racial Discrimination to receive and consider communications from individuals or groups of individuals claiming to be victims of violations of any of the rights set out in the Convention. In addition, Argentina ratified in 2000 the International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169). However, it has not ratified the ILO Migration for Employment Convention (Revised), 1949 (No. 97) or Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143).

10. In 2001, the Government of Argentina committed to integrating the conclusions of the Durban Declaration and Programme of Action into a national plan of action against discrimination.[3]

11. At the regional level, Argentina is party to a number of instruments, and in 2013 signed the Inter-American Convention against All Forms of Discrimination and Intolerance and the Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance, but is yet to ratify them.

B. Constitutional provisions

12. The 1994 Constitution defines Argentina as a democratic and pluralistic society, with a focus on the full respect of human rights. Its pillars include the equal enjoyment of rights for all inhabitants, whether Argentine or foreign.[4] The term "inhabitant" refers to nationals and foreigners residing on the national territory, even if they have not taken up residence and therefore applies to migrants and asylum seekers. Article 20 stipulates that foreigners enjoy within the territory of the nation all the civil rights of citizens. However, the 1994 Constitution maintained article 25 of the 1853 Constitution, which specifically mentions that the Federal Government shall foster European immigration. The Rapporteur is of the view that this may be in contradiction with the principle of equality.

13. Article 75 (17) establishes the acknowledgement of the ethnic and cultural pre-existence of indigenous peoples of Argentina. It further guarantees respect for their identity and their right to bilingual and intercultural education and recognizes the legal capacity of these communities and their ownership of the lands they traditionally occupy. However, the visit revealed that those provisions have not yet been implemented in reality.

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[2] See national report submitted in accordance with para. 5 of the annex to Human Rights Council resolution 16/21 (A/HRC/WG.6/14/ARG/1), para. 7.

[3] See *Towards a National Plan against Discrimination: Discrimination in Argentina* (Buenos Aires, 2005), pp. 12 and 13.

[4] See arts. 14 and 14 bis.

C. Legislation prohibiting racism, racial discrimination, xenophobia and related intolerance

14. Racial discrimination is prohibited under Law 23.592 of 1988 but only classified as a civil offense, as previously highlighted by various mechanisms. Moreover, the definition adopted is not in line with that of the International Convention on the Elimination of All Forms of Racial Discrimination.[5] The Rapporteur was informed that there was a bill under consideration to address this discrepancy. Participation in racist organizations and propaganda rooted in ideas or theories of racial, sexual, social or national superiority and incitement to persecute or hate on racial grounds are specifically penalized as criminal offenses[6] with penalties ranging from one month to three years' imprisonment. Article 80 of the Criminal Code[7] recognizes hatred based on race, religion, gender, sexual orientation or gender identity as aggravating circumstances in homicide cases.

15. Article 13 of the 2004 Migration Act (Law 25,871) — recognized internationally as very progressive — expressly prohibits discrimination. Article 6 requires the State to guarantee migrants and their families the same access to rights as enjoyed by nationals, particularly with respect to social services, public goods, health, education, justice, employment and social security. Article 7 provides that in no case shall the migratory status of an individual constitute an impediment to gaining access to education, either in public or private institutions, and at all educational levels, including higher education. However, the limited public awareness of the law and its poor implementation remain major pitfalls exposing migrants to situations of de facto discrimination, marginalization and/or exclusion.

16. The National Law on Education (26.206) gives the promotion of an understanding of the elimination of all forms of discriminations as one of the objectives of the national education policy, which also aims at ensuring equality while respecting differences between persons without discrimination of any kind. The Law further mandates the development of policies to promote equality in education and deal with situations of discrimination arising from socioeconomic, cultural, geographic, ethnic, gender or any other factors that affect the full exercise of the right to education (art. 79). It requests that national curricula be defined in order to promote respect for multiculturalism and knowledge of indigenous cultures, fostering the understanding that cultural diversity is a positive attribute of Argentine society (art. 54). Under its title XI, the law calls for the development of intercultural bilingual primary and secondary education and facilitates interactions with other components of society.

17. Labour Law 20.744 of 1976 prohibits the discrimination of employees on various grounds, including race, nationality, religion (art. 17), and provides for the possibility of implementing affirmative action with a view to redressing inequalities (art. 17 bis).

18. Law 23.302 of 1985 on the protection of indigenous communities stipulates that it is of national interest to support and defend such communities, and provides for the development of plans to facilitate their access to land ownership and promote their socioeconomic development and access to basic needs, including adequate health and education services. The law marks the official recognition of the historical claims of the indigenous communities and calls for the establishment of the National Institute for Indigenous Affairs.

D. Relevant policy and institutional framework

19. In 2005, Argentina developed the National Plan against Discrimination[8] in cooperation with United Nations agencies. The Plan's original assessment determined that

[5] See art. 1.
[6] Art. 3, Act No. 23.592.
[7] Law 26.791; see also arts. 92 and 105.
[8] Decree No. 1086/2005.

discrimination in Argentina remained structural. It identified the various groups subjected to discrimination and the trends and manifestations of the phenomenon, and recommended that any discriminatory act be elevated to a criminal offence and referred to federal jurisdictions.[9] However, that recommendation remains unfulfilled. As part of the Plan, a proposal was put forth for reforms in various fields, ranging from the administration of justice, public administration and security forces to education, health and media, while delineating emergency actions to be taken, some of which have been implemented.

20. Argentina has established a number of institutions to address the issue of discrimination. The Secretariat for Human Rights, under the Ministry of Justice and Human Rights, manages a national directorate for vulnerable groups to ensure the effective implementation of national and international standards that guarantee the human rights and fundamental freedoms of vulnerable groups, including the destitute, migrants, children, asylum seekers, persons with disabilities, the elderly, women, indigenous peoples and sexual minorities.[10] The Human Rights Secretariat has a centre dedicated to receiving complaints and to citizen orientation, focusing on rights violations or denials by national, provincial or municipal institutions or agents. The centre organizes arbitration between the parties in conflict or refers the cases to the judicial system along with an opinion based on collected evidence.

21. The National Institute against Discrimination, Xenophobia and Racism was created in 1995 by Law 24.515 as a decentralized institution. Its main objective is to develop national policies to combat all forms of discrimination, xenophobia and racism, and promote and implement federal and cross-cutting public policies articulated in consultation with civil society. The Institute coordinates three observatories to monitor discrimination on the radio and television, discrimination in sport and discrimination on the Internet.

22. The Institute also has a mandate to receive and keep a record of complaints related to discriminatory, xenophobic or racist behaviours. It reported that, in 2015, it had received 1,794 cases, of which 741 had been resolved. The Special Rapporteur notes with appreciation the fact that the Institute has decentralized representations in all provinces, and is of the view that, in the light of the severity of the situation faced by certain indigenous communities in certain provinces and their difficulties in gaining access to justice, the Institute should reinforce its efforts related to the documentation of violations and complaints and use the established jurisprudence whereby it can be a plaintiff in cases of discrimination. In order to be more transparent, the data on registered complaints should also be disaggregated by province and grounds of discrimination on a yearly basis.

23. The Special Rapporteur also notes with appreciation that the Institute has produced two editions of national and local maps of discrimination, with a view to disseminating reliable data on the subject, assessing the situation of individuals and groups who are victims of discrimination and informing policies. The maps reflect the perceptions and experiences of discrimination by the population at large, mostly disaggregated by gender, age and socioeconomic situation. The Institute has developed the maps in conjunction with universities throughout the country. This work allows the collection of data on the national territory but also provides a platform for the issue of discrimination to be discussed within the university system, which remains reticent in addressing the subject. However, the Special Rapporteur notes that the disaggregation of data by ethnicity or identity is not systematic for all indicators. In the most recent map, produced in 2014, the questionnaire contained a section on sociodemographic characteristics of respondents that included province of residency, locality, sex, age, level of education, occupation and socioeconomic index, but no question on the ethnic or group identity.[11]

24. The National Institute of Indigenous Affairs was established in September 1985 by Act No. 23.302. It is mandated to uphold constitutional provisions on the rights of

[9] National Plan against Discrimination, 2005, p. 6.

[10] See the common core document for Argentina dated 8 July 2015 (HRI/CORE/ARG/2014), para. 97.

[11] See Instituto Nacional contra la Discriminación, la Xenofobia y el Racismo, *Mapa nacional de la discriminación. 2a ed.* (Buenos Aires, 2014), p. 14, available from www.inadi.gob.ar/mapa-discriminacion/documentos/mapa-de-la-discriminacion-segunda-edicion.pdf.

indigenous peoples, including their right to participate in decisions that affect them, yet has been criticized for implementing a social welfare approach to supporting indigenous communities, rather than promoting their sustainable development. The Institute manages the national registry of indigenous communities and coordinates their effective involvement in the elaboration and implementation of programmes and policies, including issues of land survey and social services, in consultation with the Council of Indigenous Participation, established by law to ensure the participation of indigenous peoples in decision-making processes. However, concerns persist about the fact that the Government has the final say in determining the modality of the selection of representatives of indigenous communities in the Council, which convenes at the discretion of the President of the National Institute of Indigenous Affairs, who has never been someone from indigenous communities. The Special Rapporteur notes with gravity the continuing level of distrust regarding the ability of the Institute to represent effectively indigenous interests, and its limited financial capacity to fulfil its mandate. The Institute is also in charge of managing the most contentious aspect of indigenous land ownership, namely, the demarcation of the lands that the communities occupy. Indigenous communities still experience challenges in receiving proper support from the Institute in order to obtain recognition as legal entities and to be able to follow the procedure to its conclusion once they have introduced their claim for land ownership; challenges also exist in receiving adequate support when seeking remedies for undue evictions.

25. Article 86 of the Constitution of 1994 establishes the Office of the Ombudsperson. The Constitution provides the office with the procedural right to seek justice whenever the collective rights of citizens are threatened, violated or repudiated by any action of the State. The Ombudsperson may launch investigations into public administration acts that may infringe rights and interests, including extended or collective interests. Certain groups benefit from special attention, including indigenous peoples and migrants. It is worth noting that, despite the many calls and recommendations made by various human rights mechanisms, at the time of the visit there had not been a formally selected Ombudsperson since 2009. However, the officer in charge and his team, including provincial delegates, have documented and investigated reports of rights violations and addressed the institutions concerned.

26. The Media Ombudsperson mandated by Law 26.5220 receives and channels complaints from the general public with a view to promoting and defending people's rights regarding both public and private audiovisual media. It also has a mandate to promote the participation of all sectors of society in the media. Since starting its operation late in 2012, the institution noted that historical patterns of discrimination and exclusion are also reflected in the audiovisual media in the form of communicational practices ranging from negative representations and stereotyping and discriminatory rhetoric to blatant invisibility, namely, in news reporting and advertising.

IV. Trends and manifestations of racial discrimination in Argentina

27. The Special Rapporteur notes with concern that little improvement has been made in the situation of historically discriminated groups since the most recent visit by the Special Rapporteur on the rights of indigenous peoples in 2012 and the Committee on the Elimination of Racial Discrimination reviews in 2010 and 2016. The Special Rapporteur found that in Argentina discriminatory practices often intersect with poverty more severely affecting minority groups, including indigenous peoples, afro-Argentines, and migrants, with a greater incidence on women and children. This has been referred to as the offence of "wearing a face". Discrimination expresses itself in many ways, including through the denial of access to adequate housing, food, health care, quality education and decent employment, but also the existence of obstacles in gaining access to justice and the due process of law, participating in social and political life and enjoying the freedom of association and assembly, and the criminalization of rights defenders.

28. There is a high level of prejudice among the population at large. The Special Rapporteur notes the implementation by the National Institute against Discrimination,

Xenophobia and Racism of programmes to foster cultural exchanges and address general stigma with regard to indigenous peoples, Afrodescendants, migrants, religious diversity and the Jewish, Arab and Armenian communities. The Special Rapporteur acknowledges efforts made to raise awareness, including in schools. For example, as part of the campaign entitled "The school against racism", implemented in conjunction with the children's channel of the Ministry of Education, an animated series was disseminated entitled *Iguales y diferentes* (equal but different), based on guidelines for children on preventing discriminatory practices.

29. The discrimination map produced by the Institute found that education, health and employment were the sectors where discrimination had been perceived to be the most severe. It highlighted that discrimination had mainly been experienced in schools, public hospitals but also public transportation and in certain geographic areas, including peripheral urban areas and rural dwellings.

30. The study also showed that, in addition to the persisting discrimination against certain groups, there had been a significant number of discriminatory acts based on religious grounds. Muslims recorded the highest levels of discrimination based on religious identity, mainly because of the stereotypical representations of that group linked to prejudices related to fundamentalism and terrorism. Given the low number of Muslims in Argentina, the Institute pointed to the role of the media in shaping stigmatization.

31. The Special Rapporteur notes with concern the grave impacts that the denial of access to adequate health-care services, but also education and adequate economic activities, have had on indigenous communities, who at times live in extreme poverty, but also on migrants and people of African descent. Furthermore, difficulties in settling land ownership disputes continue to put a strain on indigenous peoples' capacity to fulfil their basic needs, including access to food and to clean water.

A. Indigenous peoples

32. The Special Rapporteur is alarmed by the severity of the deprivations still experienced by indigenous communities. In its 2014 annual report, the Office of the Ombudsperson highlighted that indigenous peoples had less access to economic and social rights. The report voiced concerns over the lack of access to safe drinking water, food, health care and education. The most severe expression of these deprivations could be the situation of malnutrition in some indigenous communities.

33. Discrimination against indigenous peoples in Argentina is both structural and horizontal. Many Argentinians believe that indigenous peoples should make a greater effort to integrate within society, thus denying their right to identity in clear contradiction with constitutional provisions. This also shows that efforts to raise awareness on the rights of indigenous peoples and fostering a multicultural society remain insufficient. Indigenous peoples have also generally suffered from difficulties in effectively participating in decision-making, including on matters that directly affect them. More alarming are the various forms of repression of the exercising of freedoms of expression, association and assembly, often in land-related matters.

Access to economic, social and cultural rights

34. Regarding access to health, indigenous people, especially in northern provinces, are facing difficulties owing to the implementation of health policies disregarding their cultural identity. In public health centres, the presence of translators and/or interpreters remains rare, constituting an impediment to proper doctor-patient communication, obstructing diagnosis and the administration of appropriate medical treatment. Little regard has been given to indigenous culture, including traditional medicinal practices. This lack of cultural sensitivity at times represents a disincentive for seriously ill patients to seek medical attention and particularly affects women's sexual and reproductive rights. It was also reported that, in some cases, medical personnel have deliberately ignored severely ill patients and their families or given little regard to pain management during treatment. The Special Rapporteur received a testimony from a mother who had lost her daughter because

the medical personnel refused to treat her for three days and only reacted when the patient was in agonizing pain. The absence of equipment and medication was also raised. The Ombudsperson, for example, reported that a field visit late in 2015 to several departments mostly inhabited by indigenous peoples in the Chaco province revealed serious impediments in gaining access to secondary health centres, due to the limited availability of ambulances, qualified doctors and basic medical supplies and medication to treat common affections. The investigation also highlighted the total absence of an intercultural perspective in public health policies.[11]

15. It should be noted that the United Nations Children's Fund (UNICEF), in its 2015 country report on Argentina, underscored that between 1990 and 2014 child mortality among indigenous children aged under 5 years had stagnated at three times the national average, which itself had decreased over the same period.[12] Recently, an emerging trend of possible high incidence of suicide among indigenous young people was to be investigated by the organization.

16. A research published in 2013 by the University of Buenos Aires presented alarming data regarding the malnutrition of indigenous children in the province of Salta. The study, carried out from June to August 2011 in 74 communities, showed a significant prevalence of chronic malnourishment among indigenous children of up to 62.4 per cent of 1 to 4-year-olds, and 37.5 per cent, of those aged under 1 year. In total, 50 per cent of indigenous children aged under 1 year and 70.8 per cent of those aged 1 to 4 suffered from some type of nutritional deficit. The Special Rapporteur on the rights of indigenous peoples had already reported in 2012 concerns about the situation in the Chaco province, which was ordered by the National Supreme Court to take a series of actions to ensure that the inhabitants of the region receive health care and adequate food. Unfortunately, cases of death linked to malnutrition of indigenous children were again reported both in Chaco and Salta in 2015.

17. While visiting the northern provinces of Salta and Formosa, recurring complaints were received about access to education, namely, the absence of adequate proximity educational facilities, the absence of qualified teachers to implement the bilingual intercultural education enshrined in the Constitution, the high level of school dropout or even instances where children had passed a class without having really achieved the required level of learning. Furthermore, situations of stigmatization and isolation of indigenous children in mixed schools were reported, with little effort from educators to foster a culture of acceptance, mutual respect and understanding among students. The Special Rapporteur notes with grave concern the absence of qualified teachers from indigenous communities nationwide, which is a serious obstacle to the implementation of bilingual intercultural education. In general, teachers receive very little training on intercultural education and indigenous themes. Failure to implement an intercultural bilingual education has de facto excluded a significant number of indigenous children from having access to adequate education.

18. Moreover, the large differences between the availability of adequate educational facilities in urban versus rural areas disproportionally affect indigenous children. For example, in Salta, the local Ministry of Education noted that until very recently there had been no secondary schools in rural areas. In October 2013, the Ombudsperson was called to visit a community in the province of Salta, where it found that the infrastructures of the local school were in clear violation of the rights of more than 500 children, mostly indigenous. The only response received was from the provincial Ministry of Education, which mentioned that a refurbishment project would be introduced in the 2015 budget proposal. This example, among many similar ones, is telling of the little commitment by the various institutions to prioritize actions to immediately stop the violations endured by indigenous peoples, including children.

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[11] See Defensor del Pueblo de la Nacion, *Informe Anual 2015* (Buenos Aires, 2015), p. 44. Available from www.dpn.gob.ar/documentos/anuales/anual2015.pdf.

[12] See UNICEF, "Informe Anual de Actividades, Argentina, 2015", p. 10. Available from www.unicef.org/argentina/spanish/pdfs_informeAnual2016.pdf.

39. Although performance data are collected, including the class repetition rate, they are not disaggregated and simply compare rural and urban performances. At higher education levels, it is evident that minority groups, especially indigenous peoples, are not represented either as students or faculty.

40. Access to safe drinking water remains a challenge for a number of communities. The Special Rapporteur conducted a follow-up visit to the community of Nam Qom, in Formosa, which had already received several visits, including by the Inter-American Commission on Human Rights, regarding its living conditions and land struggles. The community is located 30 minutes from the Governor's building yet still does not benefit from running water, nor adequate sanitation or housing. The community has evidently been neglected by provincial authorities and resembles a slum. The Rapporteur notes the serious discrepancy between the progress reported in all sectors by the local government and the complaints received from local civil society actors and indigenous communities that travelled from across the province to meet with him. This is not an isolated case. The Rapporteur noted a paternalistic approach to addressing indigenous questions that favours a welfare response rather than a strategy to sustainably empower those communities.

Violations of civil and political rights

41. The Special Rapporteur is seriously concerned about the information regarding the continued harassment and violence directed towards indigenous communities, both by government agents or made possible through their complicity or inaction. These have often taken place in the context of the ongoing land disputes previously described by human rights mechanisms that have reviewed Argentina. While the adjudication of these cases by the local courts hardly ever goes in the favour of the communities, there is a continued criminalization of communities who often stage protests by blocking national roads to be heard since they have very few means of making their claims visible. These protests and demonstrations have been violently repressed by excessive use of force by local security forces, at times using tear gas and rubber bullets against crowds of elders, women and children. The continued criminalization of community leaders and defenders is also very worrisome. This further contributes to reinforcing horizontal discrimination and stigmatization of indigenous peoples. It was reported that at times local authorities had fostered resentment against indigenous peoples.

42. The Special Rapporteur would like to bring attention to section IV. A of the 2012 report of the Special Rapporteur on the rights of indigenous peoples, James Anaya (A/HRC/21/47/Add.2), in which he describes violations related to land tenure. The Special Rapporteur is highly disappointed that no progress has been made in that regard and — given that the legal provisions ordering the suspension of evictions of indigenous communities from the lands they occupy is soon to expire — he reiterates the recommendations contained in the aforementioned report.

43. Most worrisome is the continued persecution of certain communities. On 30 September 2015, several members of the Qom Potae Napocná Navogoh "*La Primavera*", in Formosa, were wounded by the provincial security forces following a blockade by a group of 10 women with their children who were claiming their right to decent housing. This community had already been subjected to violent repression in 2010 in similar circumstances leading to the death of a community member and a police officer. In 2011, the Inter-American Court of Human Rights issued precautionary measures No. 404-10 instructing the protection of the community. Their leader, Felix Diaz, still faces a number of criminal charges, and his family is subjected to harassment. This is an emblematic case yet believed to be representative of many others as documented by the organization Amnesty International.[14]

44. The Special Rapporteur also received information about a trend of reprisal against lawyers providing legal counsel to indigenous communities. He heard, for example, about

[14] In 2015,Amnesty International published a mapping of 200 cases of conflicts in Argentina involving indigenous communities. See http://territorioindigena.com.ar/.

the intimidation to which the local delegate of the National Ombudsperson Office in Formosa had been subjected, including attempts to discredit her competence.

45. Indigenous peoples are still underrepresented in all spheres of Government. The Special Rapporteur systematically heard that data in this regard had not been collected. There was a general acknowledgement that very few indigenous peoples figured in the various branches of Government, including at the federal level.

46. Few efforts have been made to implement selection modes that are in line with indigenous cultural practices to select their representatives sitting in specialized agencies catering to them. In Formosa, the institution dedicated to indigenous issues is composed of nine democratically elected directors, of which only three members are from indigenous communities at present. However, the legitimacy of the indigenous representatives is highly contested by community members as the way they were selected is not considered to be in line with indigenous traditions. This situation has fostered serious divisions within indigenous communities, which denounce a policy of electoral clientelism. This further stigmatizes the communities who demands respect for their cultural identity and understanding of life and constitutes an additional obstacle to having their claims heard. Consultation also remains problematic, specifically regarding the implantation of economic operators on traditional lands, but also in the design and update of laws that directly influence indigenous interest.

47. Although Argentina recognizes a certain number of indigenous communities, the Nivaclé claim that they have been denied recognition and therefore cannot have access to national identification cards, which in turn keeps them from gaining access to public services in the province of Formosa.

B. Migrants and asylum seekers

48. According to the 2010 census, the foreign nationals represent 4.5 per cent of the population of Argentina. Migrants mainly come from neighbouring countries. Only 0.2 per cent of foreign nationals are from Africa and Oceania, and further 0.5 per cent from China. The Special Rapporteur notes that migrants from European countries integrate easily into society, while others have faced challenges.

49. The Special Rapporteur is concerned that, despite the progressive immigration law, migrants — both documented and undocumented — continue to face racial discrimination and xenophobia in areas such as education, access to health care, public services, housing and employment. Physical attacks against migrants, including murder, have been reported. In Argentina, as elsewhere, migrants have been scapegoated for the ills of society and in recent years politicians have used xenophobic or stigmatizing rhetoric against certain migrant populations.

50. The Special Rapporteur was informed that some government officials have made statements in the media accusing migrants of "being responsible for the drug trafficking in the country",[15] or in general taking part in criminal activities.[16] Words such as "we are infested with foreign criminals"[17] testify to the mounting xenophobic discourse that some public figures have used in local media.

51. Concerns were also raised about a trend of social and institutional discrimination, particularly affecting migrants from China, Colombia, the Dominican Republic and Senegal. Colombians have been portrayed as drug traffickers and subjected to difficulties in entering Argentina, unlike other nationalities in the Southern Common Market (MERCOSUR) and in contradiction with the migration law.

[15] See article in *La Nación* (8 May 2014), www.lanacion.com.ar/1688707-miguel-pichetto.

[16] Ibid.

[17] See article in *La Nación* (19 August 2014), www.lanacion.com.ar/1719966-sergio-berni-el-fin-de-semana-detuvimos-a-mas-de-60-extranjeros-que-vienen-a-la-argentina-unicamente-a-delinquir.

Migrants from the Southern Common Market (MERCOSUR)

52. In total, 40 per cent of the total migrant population surveyed by the National Institute against Discrimination, Xenophobia and Racism declared that they had suffered discrimination, mainly related to nationality, poverty and skin colour. Although the law facilitates residency status for migrants from neighbouring countries, integration programmes remain insufficient and they had been marginalized. They often face de facto ghettoization, living in communities in the peripheral urban areas. According to the Institute, some nationalities are more likely to experience discrimination, such as Bolivians. They are constrained to taking low-skilled jobs and are often exploited. The number of fatal workplace accidents in recent years testifies to the dangerous work conditions that migrants are exposed to, including children.[18] Paradoxically, the Institute's discrimination map revealed that 41 per cent of those interviewed held the belief that "workers who come from other countries are taking away jobs from Argentinian workers".[19]

53. The Special Rapporteur was informed that, despite the existing legal protection, migrants sometimes face difficulties in gaining access to basic services, particularly from private-service providers. An example was given of a cable television provider that simply refused to serve customers living in certain areas, claiming it was too dangerous for a technician to perform the necessary installations in those locations. The Ministry of Public Defence also provided information on a long-pending judicial case against a transportation company that stopped its evening service to a particular area with a high concentration of migrant workers. More worrisome was the refusal of ambulances to provide services in certain areas citing security concerns. Access to judicial remedies also often remains near impossible for such populations, even cases of murder.[20]

Migrants from outside the Southern Common Market (MERCOSUR)

54. Since the 1990s, Argentina has been a destination for migrants from Africa and outside MERCOSUR, such as the Dominican Republic and Haiti. The Special Rapporteur notes the efforts made by the Government to regularize a number of migrants from Senegal, with the implementation of a special regime implemented early in 2013 leading to 1,697 applications, of which 1,391 had been resolved by January 2014. Similarly, since 2004, of the 12,598 requests for regularization from Dominican nationals, 6,298 have been given residency. However, those were one-time exercises, and many Senegalese and Dominicans remain in irregular situations making them vulnerable to discrimination and exploitation.

55. While the presence of Africans in quantitative terms is considerably less than other migrants, they are highly visible because Argentina perceives itself as a country without an endogenous black community. For black migrants, the process of inclusion in local society has been a complex one. Many African migrants work mostly in the informal sector, including sidewalk vending, which has exposed them to harassment and extortion by the police and local gangs, and widespread horizontal stigmatization. Access to housing has been very difficult for them, and they often live in slums or crowded city boarding houses, where they are subjected to excessive rents.

56. The Special Rapporteur is particularly worried about the escalation of violence against this population group and the total absence of mechanisms of protection that are accessible to them. In March 2016, Massar Ba, leader of the Senegalese community in the city of Buenos Aires, died a brutal death. Civil society organizations have expressed concerns that his death occurred after he had filed a complaint against the metropolitan police for the persecution of Senegalese street vendors. Following his complaint, he was evicted by the police from the community home where he had been living. In the days preceding his tragic death, he participated in a protest with other sidewalk vendors to

[18] See report on compliance with the ICERD (paras. 58 and 59), http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/ARG/INT_CERD_NGO_ARG_25858_E.pdf.

[19] See Instituto Nacional contra la Discriminación la Xenofobia y el Racismo, *Mapa de la Discriminación. Segunda Edición* (Buenos Aires, 2014), p. 77.

[20] See footnote 18.

denounce police persecution in the Flores neighbourhood. Civil society groups denounced irregularities in the investigation of the case. The impossibility for the association he headed to present itself as a plaintiff had meant it was unable to gain access to any information regarding the investigation.

Asylum seekers

57. According to the Office of the United Nations High Commissioner for Refugees, in the period 2011-2015, Syrians represented 39 per cent of the refugee population in Argentina. The Special Rapporteur was informed by the Ministry of Foreign Affairs and the National Commission for Refugees that the country intended to receive a greater number of Syrian refugees and that a decree had been issued to facilitate this.

58. The law provides for free access to education and health care for refugees. However, organizations working with refugees have reported challenges relating to the absence of a comprehensive settlement scheme, particularly in terms of gaining access to housing, the labour market, social security or even adequate health coverage, including for children. As a consequence, refugees are likely to be exploited in the workplace and at a greater risk of falling into the informal economy, which further contributes to their stigmatization as potential "criminals".

59. The Ministry of Public Defence (*Ministerio Público de la Defensa*) documents[21] possible discriminatory practices in the processing of asylum claims, based on the gender identity, sexual orientation or nationality of the claimant. Certain nationalities seem to be systematically subjected to suspicion regarding the validity of their claims, including Cubans, Dominicans (especially women) and Senegalese nationals. The Ministry also indicated that, outside of Buenos Aires, translators are rarely available to assist non-Spanish-speaking asylum seekers, who are reportedly not systematically informed of the procedure and their right to free legal counsel.

C. Afro-Argentines

60. Until recent years, the very existence of Afro-Argentine people as a component of society had been negated in Argentina. It is believed that the wars of independence took a serious toll on the number of Afrodescendants in the country. The 2010 census found that approximately 150,000 people claimed to be of African descent, with 92 per cent of those born in Argentina. In total, 70.3 per cent of that population is thought to be concentrated in the province of Buenos Aires and the cities of Buenos Aires, Entre Ríos, Santa Fe and Córdoba. However, those figures have been contested as an underestimation because of the way the census was administered.

61. Society at large still does not recognize the existence of Afro-Argentines. It was reported that in 2002 an Afro-Argentine woman, who was president of a civil society organization, had been detained at the international airport as immigration officers considered that her passport was forged because they did not believe the actual existence of Afro-Argentines. Although she filed a complaint, she never received a response or reparation. The discrimination map developed by the National Institute against Discrimination, Xenophobia and Racism[22] shows that 38 per cent of those interviewed admitted an aversion toward people of African descent, while only 3 per cent acknowledged that this group was most affected by racial discrimination. By contrast, 61 per cent of the Afrodescendants interviewed acknowledged having been subjected to discrimination.

62. Civil society organizations pointed to the absence of educational content on African history, ignorance about the historical contribution of African people to State building and the stereotyped folkloric representation that society holds of them. Today, Afro-Argentines

[21] Information provided by the Ministry of Public Defence.

[22] See footnote 19.

are amalgamated with the more recent African immigrants and experience similar difficulties in terms of stigmatization and access to decent employment and public services.

63. The Special Rapporteur notes with appreciation programmes implemented by the National Institute against Discrimination, Xenophobia and Racism to promote historical redress and reparation for the Afrodescendent community by facilitating their participation in the public sphere. It is also noted that 8 November has been established the National Day of Afro-Argentines and African culture. Moreover, in cooperation with the Office of the Media Ombudsperson, civil society organizations developed 10 recommendations aimed at the mass media in order to prevent the use of racist, discriminatory or stereotypical language or images in various communication outlets.

64. Despite a number of positive policies, racism and harassment of black people in the streets and the non-implementation of policies tailored to redress their situation persist. Most of the measures implemented seem to be cultural, which are necessary in shaping the perception and opinion of the majority. The absence of a real political commitment has translated into the absence of concrete actions and even efforts made at blocking certain initiatives. For example it was reported that in 2010 the now National Minister of Education banned the use of the Manual of the Bicentennial in the schools of the city of Buenos Aires arguing that it was too focused on indigenous peoples, people of African descent, women and workers.

V. Challenges in tackling racism and discrimination

A. Invisibility

65. The Special Rapporteur notes with grave concern the continued invisibility of the most marginalized groups, especially indigenous peoples. This invisibility is noticeable both at the level of public institutions where indigenous peoples, migrants and Afro-Argentine people are not at all represented, and in society at large. That reality is captured in the discrimination map developed by the National Institute against Discrimination, Xenophobia and Racism, which found that, according to the perception of respondents, of the 14 most discriminated against groups of individuals, indigenous peoples are ranked eighth, right behind people of African descent and far behind persons perceived to be discriminated against because they are overweight (ranked first).[23] While only 49 per cent of respondents perceived indigenous peoples to be subjected to discrimination, 77 per cent of interviewed indigenous peoples reported having experienced discrimination. The law on indigenous communities is one of the least known legal instruments, with only 12.7 per cent of the population aware of it. The discrepancies between perceived and experienced discrimination apply to all groups subjected to racial discrimination.

66. Overall, 33.4 per cent of the population interviewed by the Institute considers that indigenous peoples should assimilate with the rest of the population, a perception that is more widespread in regions where indigenous peoples are numerous, including provinces in the north-east and north-west and in Patagonia.

B. Obstacles to gaining access to justice

67. The Ministry of Public Defence concluded that discrimination constitutes both a cultural and structural obstacle to gaining access to justice.[24] Indigenous peoples have not benefited from the measures necessary to guarantee due process while defending their rights. Major obstacles include the absence of interpreters and translators; limited

[23] Ibid., p. 48.

[24] See Ministerio Público de la Defensa, *Acceso a la Justicia de los Pueblos Indígenas* (Buenos Aires, 2010), www.mpd.gov.ar/pdf/publicaciones/biblioteca/014%20Acceso%20a%20la%20justicia%20Indigenas.pdf.

availability of legal assistance specialized in indigenous rights; difficulties in producing proof, especially in civil proceedings; and most importantly the prejudice of judicial officers.

68. The obstacles in gaining access to fair and impartial justice are also experienced by migrants. Recently, a first jurisdiction magistrate in La Plata considered the status of foreign national to be an aggravating circumstance in his sentencing, and in clear contradiction to constitutional provisions. He argued that the State holds fewer obligations to migrants than it does to nationals. The defendant in question was a transgender Peruvian national. The Special Rapporteur notes that transgender migrants have also experienced high levels of prejudice, discrimination and criminalization. He notes with appreciation the actions taken by the National Institute against Discrimination, Xenophobia and Racism to address that specific case.

69. The Ministry of Public Defence provided a long list of cases involving indigenous peoples or migrants in which provincial and national courts had failed to rule, delayed the consideration of cases or not followed due process. Some cases had been pending for a long time before the Supreme Court. In that regard, the Rapporteur notes with concern the lack of acknowledgement by the National Supreme Court of racial discrimination as a cause of denial and violation of rights.

70. According to the data produced by the Ministry of Justice and Human Rights, between 2004 and 2013, no sentences were handed down relating to the violation of the anti-discrimination law.[25] Similarly, the Ministry of the Interior reported that it had not collected sufficiently disaggregated data on the 194 cases relating to violations of the anti-discrimination law between 2012 and 2013. This may also reflect the lack of access to justice by groups that are discriminated against.

71. The Public Prosecutor's Office reported that, between 2013 and 2016, 32 cases had been registered with a violation of article 2 of the anti-discrimination law. Of those 32 cases, 21 had been filed in first jurisdiction courts and 11 had been dismissed. Over the same period, 47 cases had been registered for the offence of promoting or inciting persecution or hatred against a person or group of people because of race, religion, nationality or political ideas, but no disaggregated data was provided on the respective grounds of discrimination.

72. The Special Rapporteur notes with appreciation the programme on cultural diversity established by the Ministry of Public Defence in 2008 with a view to removing the obstacles to gaining access to free public legal representation for vulnerable groups, especially indigenous peoples. The sensitization of public defenders to a set of fundamental principles should be emulated by other judicial actors.

C. Racial profiling

73. The Special Rapporteur was informed about a trend whereby the Buenos Aires Metropolitan Police and Argentine Federal Police enforce profiling in identity checks on the streets. The practice disproportionately affects migrants and people of African descent. It appears that racial profiling has increased following a 2015 decision by the Buenos Aires Superior Court of Justice to revoke a ruling that had declared null and void detention linked to identity checks, arguing that the Federal Police could randomly stop people for identification checks without any suspicion of crime, invoking the Organic Law of the Argentine Federal Police. This legislation confers to the Federal Police broad implicit powers to act according to its discretion as long as its exercise is essential "for urgent motives of general interest regarding public order and security and the prevention of crime".[26]

[25] See annex to State party report, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCERD%2fADR%2fARG%2f22733&Lang=en.

[26] See Decree 6580/58 of 31 July 1958, Chapter V.

74. Information was provided about the disproportionate detention of persons living or operating in disadvantaged neighbourhoods, leading to de facto discrimination against persons on the basis of their appearance. It was reported that, in recent months, detentions for identity checks without grounds for suspicion had had a greater impact on transgender migrants and on persons of Senegalese and Dominican origin.

75. Senegalese street vendors, as mentioned above, are reported to be systematically targeted, harassed and humiliated on a daily basis by police. The Buenos Aires Ministry of Public Defence has warned of the systematic nature of this persecution. Because the police use racial profiling to register violations of laws relating to "unauthorized street vending", the claims are often dismissed by judges for lack of merit. In 2013, the Prosecutor General's Office created the Complex Investigation Coordinating Unit, which intervenes in investigations of street vending by ordering raids in the homes of Senegalese nationals and confiscating their merchandise and personal items, the majority of which are never recovered.

76. The Special Rapporteur notes the absence of a diverse police force. In a meeting with the Ministry of the Interior, it was revealed that the shift towards a more human rights-friendly and citizen-oriented police force is only now being initiated. While some efforts have been made to increase the representation of transgender and persons with disabilities, little consideration has been given to promoting the representation of ethnic minorities, such as indigenous peoples, peoples of immigrant origins and Afro-Argentines.

D. Data collection

77. In 2010, the national census included questions on indigenous identity and for the first time on Afrodescendants. However, concerns were raised that the results of the census were very approximate given that the questions on ethnic identity were only included in the extended version of the census forms submitted to only 10 per cent of the population. The National Institute for Statics in a report published in September 2010 denounced irregularities with the design of the census and the way it had been administered mainly owing to the interventionism of the State in the functioning of the Institute beginning in 2007, thus jeopardizing its capacity to work independently and produce reliable and objective data.

78. Disaggregated data on socioeconomic indicators for all minority groups, including indigenous peoples, remains lacking. The Special Rapporteur also notes that the various United Nations agencies working in Argentina have not disaggregated socioeconomic data according to ethnic groups. It is therefore very difficult to develop tailored policies in the absence of a clear diagnosis of the issues at hand.

79. Although there have been efforts by institutions such as the National Institute against Discrimination, Xenophobia and Racism or the various Ministries to gather data, the levels of disaggregation remain insufficient to reveal progress made, or lack of thereof, in improving the situation of historically discriminated groups. The National Institute for Statics informed the Rapporteur that it was in a restructuring process. The Special Rapporteur hopes that this will be seized as an opportunity to develop the systematic collection of ethnically disaggregated data on socioeconomic indicators. Efforts are also needed to accurately count the various population groups in Argentina, which will provide them with visibility and facilitate fair representation.

E. Stigmatization

80. Several concerns were raised about the role played by the media in stigmatizing certain populations and fostering xenophobia among the public. The insistence of the media on highlighting people's nationality or residential status while reporting on crimes was highlighted. According to data published by the Office of the Media Ombudsperson, for the period 2013-2015, there were 120 news stories on themes related to migrants, 63 of which were associated with police action.

81. Research conducted by the Media Ombudsperson for the City of Buenos Aires shows that social groups such as migrants, Afrodescendants, indigenous peoples, farmers and the lesbian, gay, bisexual and transgender community are completely marginal in the media. Moreover, it appears that these categories of people have never acted as sources of information in aired stories. On the contrary, when the groups are treated as topics, their own perspective is never sought and generally they are associated to conflict with the law and discussed by others, including security forces, government officials or witnesses of incidents. In this regard, it is also noted that news programmes do not provide socially relevant information to these population groups. The Special Rapporteur hopes that the current Government will continue to support the work of the Media Ombudsperson and use its studies to encourage media actors to provide equal opportunities to all components of society.

82. In Argentina, the configuration of discriminatory sociocultural patterns in audiovisual media translates into the systematic exclusion of some social groups from the media and hinders participation and equal exercise of freedom of expression. This exclusion mirrors the existing social inequalities and amplifies it. It hinders participation in social and political processes and debates. This has a silencing effect since the voices and demands of these marginalized groups are devalued by mainstream media, thereby further entrenching the invisibility of their condition.

83. A study has shown that, in 2010 and 2011, in the context of the deaths of several indigenous children due to malnutrition, referenced earlier, some media and provincial authorities pointed to the cultural practices of the affected indigenous communities as the potential cause. This not only reportedly undermined the debate on the real causes of the issue but also set forth a perverse mechanism of stigmatizing victims and unjustly shifting responsibility.[27]

84. The Special Rapporteur was informed of instances when public figures had made stigmatizing comments. More recently, the National Minister of Education and Sports was reported to have labelled the opening of a new medical training facility in rural areas as the "conquest of the desert", making reference to an infamous military campaign that had resulted in the slaughter of indigenous peoples in the 1880s, representing a milestone in the "whitening" of Argentina. The Minister in an effort to correct himself allegedly said that the new conquest of the desert would not be won with a sword but through education, which is dissonant with the commitment to intercultural bilingual education and the recognition of historical injustices in the school curriculum.

VI. Good practices in fighting anti-Semitism

85. The Jewish community is well integrated in Argentina. The head of the Human Rights Secretariat of the Ministry of Justice and Human Rights, and former head of the Delegation of Argentine Jewish Associations, informed the Special Rapporteur that there was no widespread expression of violent anti-Semitism in Argentina.

86. The Jewish Community in Argentina has good interactions with the different government agencies and engages actively in capacity-building to fight discriminatory practices in public spheres. This allows for the early and effective reaction to any expression of anti-Semitism.

87. The Delegation of Argentine Jewish Associations receives reports of anti-Semitism and discrimination in general and publishes the resulting data, in addition to referring the cases to the relevant authorities. The Internet is the main platform on which anti-Semitic expression has been experienced (47 per cent of complaints received) while such expressions have been declining in the public sphere.

88. In the city of Paraná, province of Entre Ríos, four people were arrested in April 2016 after making anti-Semitic graffiti and Nazi signs in a public park. The local government

[27] See footnote 18, pp. 4 and 5.

quickly denounced and condemned the hateful nature of the offence. The National Institute against Discrimination, Xenophobia and Racism has also been very proactive in combating neo-Nazi groups and hate speech on the Internet and fostering religious tolerance and interfaith dialogue.

VII. Conclusions and recommendations

89. **Argentina has signed the Inter-American Convention against All Forms of Discrimination and Intolerance and the Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance. The Special Rapporteur urges the Government to take measures to ratify those two Conventions.**

90. **At the domestic level, Argentina has an extensive legal and institutional framework to tackle discrimination, racism and xenophobia. The National Institute against Discrimination, Xenophobia and Racism and the Office of the Ombudsperson have developed tailored approaches to tackling the issue of discrimination and have maintained an open dialogue with civil society organizations facilitating the discussion on persisting violations.**

91. **Despite the long-established mechanisms to redress the situation of historically marginalized groups, their situation has not appreciably improved and in some cases has worsened owing to dire economic conditions and exacerbated land conflicts. The absence of disaggregated socioeconomic indicators remains problematic. Moreover, an assessment of the impact of the 2005 National Plan against Discrimination has yet to be undertaken.**

92. **The Special Rapporteur urges the new administration to prioritize minority rights in their human rights agenda, as the situation of indigenous peoples and other marginalized groups requires immediate attention from the highest levels of provincial and federal governments. This is crucial if the country is to meet the goals of the 2030 Agenda for Sustainable Development and the commitment to leaving no one behind.**

93. **In the spirit of constructive dialogue, the Special Rapporteur makes the following recommendations, which complement the ones previously made by various human rights mechanisms, including the Committee on the Elimination of Racial Discrimination in 2016.**

On the legal, policy and institutional framework

94. **The Special Rapporteur reiterates the recommendation to elevate racial discrimination to a criminal offence while adopting the definition contained in the International Convention on the Elimination of All Forms of Racial Discrimination.**

95. **The 2005 National Plan against Discrimination, which is a good practice, needs to be thoroughly assessed and new objectives defined with the active participation of concerned groups, who should also be duly involved in monitoring progress.**

96. **While efforts by the National Institute against Discrimination, Xenophobia and Racism are commendable, it should strengthen its actions with regard to violations experienced by indigenous peoples. It should expand its reach to the most remote areas of the country and pay special attention to indigenous peoples in addition to other vulnerable groups, including people of African descent, migrants and those subjected to cross-cutting vulnerabilities, such as women and lesbian, gay, bisexual, transgender and intersex persons. Furthermore, efforts to fight horizontal prejudice need to be strengthened in order to be more effective.**

97. **The Special Rapporteur invites the Ministry of Justice and Human Rights and the National Institute against Discrimination, Xenophobia and Racism to facilitate the development of strong civil society organizations and networks among those marginalized groups that are not well organized with a view to empowering them.**

98. **The Special Rapporteur urges the Government to establish affirmative action measures to ensure the effective representation of all minority groups in the highest decision-making positions, and in particular in positions of influence, such as in education (including at the university level), the judiciary, legislatures and executive positions; but also among the security forces, including the police at the federal and provincial levels. This is particularly urgent for indigenous peoples as the current modes of their participation have largely failed to provide them with the voice and visibility necessary to remedy their long history of exclusion and marginalization.**

99. **The absence of reliable data and statistics remains problematic, and a state policy must be established that requires the National Institute for Statics to design protocols for the collection of comprehensive reliable disaggregated data on a wide range of indicators, in coordination with all ministries and specialized institutions. The Special Rapporteur invites the Institute to engage with all stakeholders concerned in designing the questionnaires for the next census, especially with regard to questions related to identification.**

100. **The Special Rapporteur would like to suggest that the National Institute against Discrimination, Xenophobia and Racism involves the National Institute for Statics in developing its discrimination map with a view to insuring the necessary levels of data disaggregation while observing the safeguards needed while collecting identity-related data.**

Historically marginalized groups

101. **It is urgent that the Government develop a comprehensive whole-of-Government policy implemented at the federal and the provincial levels to ensure the protection of indigenous peoples' rights.**

102. **The bilingual, intercultural education envisaged by the Constitution has to be implemented without further delay. The Ministry of Education needs to involve indigenous communities in all stages of designing and implementing curricula so that effect.**

103. **The National Institute of Indigenous Affairs should be reformed and its mandate strengthened with wider decision-making powers and a greater reach at provincial levels. Its composition should include legitimate representatives of indigenous communities in order to foster trust among its primary constituents. Its actions regarding the registration of indigenous lands and protocols in place in that regard should be reviewed in order to become more effective taking into account the opinion of all stakeholders concerned.**

104. **The Special Rapporteur understands that Nivaclés are a people also present in Paraguay, bordering the province of Formosa, and suggests that the State further investigate the claims of the Nivaclé in Argentina in an effort to prevent statelessness.**

105. **The Special Rapporteur invites the Government to officially launch the Decade of People of African Descent nationally and finance specific activities in consultation with the community.**

106. **The State should ensure that the operations carried out by its agencies do not have the purpose or consequence of stigmatizing migrants, but rather facilitate their regularization.**

107. **The Special Rapporteur recommends that the Government establish a comprehensive programme for refugees and migrants to facilitate their access to adequate housing, health care and language classes and training to foster integration into the labour market. Such a programme should also include regular dialogues between migrants and host communities in order to dissipate mistrust, stereotype and foster a culture of acceptation.**

On the administration of justice

108. **The Special Rapporteur recommends that the Government establish a multicultural approach to the administration of justice at the federal and provincial levels. This requires the establishment of specialized courts to deal with indigenous issues, the training of specialized judicial professionals and the integration of minority groups in the judicial system. It also entails providing interpreters, translators and free legal counsel through judicial processes.**

109. **The Special Rapporteur calls on the Supreme Court to play its role in setting jurisprudence in cases presenting evidence of discrimination as a cause of denial of rights.**

110. **The Special Rapporteur urges the Government to take immediate measures to investigate the many cases of repression against minority rights defenders and their persecution by federal and local authorities. The fight against impunity should be proactive, and specialized investigation protocols and resources should be dedicated to violent crimes against historically discriminated groups, especially indigenous peoples.**

111. **The Special Rapporteur recommends that the Government undertake measures to put an end to racial profiling, strengthen the legal framework, including a specific prohibition of racial profiling, and establish clear criteria for law enforcement agents for initiating and conducting stops and identity checks.**

112. **While the Special Rapporteur recommends that the Government ensure adequate resources for human rights and non-discrimination training with a practical dimension for law enforcement agents, he recalls that addressing the problems of racial profiling also requires awareness-raising to inform individuals of their rights and particularly those groups likely to be profiled. Ethnic and cultural diversity within the security forces is also essential. More measures to improve police-community relations and build trust should also be implemented.**

113. **Ethnically disaggregated data on the use of stops and identity checks by law enforcement agents, including police forces, should also be collected. In that regard the Special Rapporteur encourages the Government to promote the implementation of good practices, such as the use of registration forms for the police to record all identity checks. Such forms could provide the victims of racial profiling with a record of their encounter with the police that could be used as a proof when seeking remedy.**

On hate speech and xenophobic discourse

114. **The Special Rapporteur acknowledges the good practice of establishing the Media Ombudsperson and encourages the media to work with the Ombudsperson and develop, in consultation with civil society, voluntary ethical codes of conduct and self-regulatory measures, policies and practices to combating racism.**

115. **The Special Rapporteur takes note with utmost gravity of the expression of xenophobic and stigmatizing discourse by public officials and politicians. He is of the view that xenophobic hate speech should be immediately sanctioned as this type of discourse is detrimental to fostering a culture of inclusion. He urges the State to sensitize its officials with regard to their responsibility in shaping public opinion and therefore refrain from propagating inaccurate, stigmatizing ideas about certain groups in society, and further encourages public figures to use their platforms to foster a culture of mutual understanding and tolerance and provide a positive narrative on the contribution of historical marginalized groups.**

116. **The media has an important role to play in promoting multicultural diversity, and the influence they have in shaping opinions and attitudes on ethnic groups should be used to promote tolerance and respect for diversity. The Special Rapporteur encourages the Government to ensure diversity of voices in the media through incentives and support to community media providing visibility and voice to victims of racism.**

117. **Furthermore, the Special Rapporteur encourages the Government in its efforts to prevent and eliminate hate speech and extremism on the Internet. In that regard, he recommends that it adopts an approach that duly protects and promotes freedom of expression and opinion.**